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 14 ACTUATE CORPORATION

15 UNITED STATES DISTRICT COURT  
 16 NORTHERN DISTRICT OF CALIFORNIA

17 SAN FRANCISCO DIVISION

18  
 19 ACTUATE CORPORATION,  
 a Delaware corporation

20 Plaintiff,

21 v.

22 INTERNATIONAL BUSINESS  
 23 MACHINES CORPORATION, a  
 Delaware corporation, MRO SOFTWARE,  
 24 INC., a Massachusetts corporation,

25 Defendants.  
 26  
 27  
 28

COMPLAINT

**E-filing**

Case No.

**COMPLAINT FOR BREACH OF  
 CONTRACT, COPYRIGHT  
 INFRINGEMENT, CIRCUMVENTION OF  
 COPYRIGHT PROTECTION SYSTEMS,  
 AND FRAUDULENT CONCEALMENT**

**DEMAND FOR JURY TRIAL**

**CERTIFICATION OF INTERESTED  
 ENTITIES OR PERSONS**

CASE NO. \_\_\_\_\_

**ORIGINAL  
 FILED  
 09 DEC 16 PM 2:11  
 CLERK U.S. DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA**

**JCS****5892****CV 09**

1 Plaintiff Actuate Corporation (“Plaintiff” or “Actuate”) for its Complaint against  
2 International Business Machines Corporation (“IBM”) and MRO Software, Inc. (“MRO”)  
3 (collectively “Defendants”) alleges as follows:

4 **THE NATURE OF THE ACTION**

5 1. This is an action for breach of contract, copyright infringement, circumvention of  
6 copyright protection systems, and fraudulent concealment. By this action, Plaintiff Actuate seeks  
7 to recover substantial fees owed by Defendant IBM for its use of Actuate’s software in  
8 connection with IBM’s software products. Pursuant to a written agreement between Actuate and  
9 Project Software & Development, Inc. and its wholly-owned subsidiaries, including MRO.COM  
10 (collectively “MRO”), MRO was granted a limited license to use, distribute, and sublicense  
11 certain Actuate software products in exchange for which MRO was obligated to pay certain fees  
12 to Actuate. In October 2006, IBM announced that it had acquired MRO, and assumed MRO’s  
13 rights and obligations under the written agreement with respect to the use, distribution, and  
14 sublicensing of Actuate’s software. IBM has breached its contractual obligations by failing to  
15 pay Actuate the full amount of fees owed to Actuate.

16 2. Separately, IBM has posted Actuate’s software and related materials, including  
17 unrestricted license keys, on IBM’s publicly available external website — [www.ibm.com](http://www.ibm.com) — for  
18 unspecified periods of time in an unprotected and freely available manner for anyone to download  
19 and distribute without restriction. This was done by IBM without any license, authorization,  
20 consent or permission from Actuate. Indeed the materials were not removed even after Actuate’s  
21 requests for removal. IBM’s unauthorized posting of Actuate’s copyrighted software and related  
22 materials, including unrestricted license keys, constitutes direct and contributory copyright  
23 infringement, as well as circumvention of Actuate’s copyright protection systems.

24 3. In addition, during the negotiations in 2006 between MRO and Actuate to amend  
25 the license agreement governing their business relationship, MRO’s representatives told Actuate  
26 that MRO’s distribution of Actuate’s software and consumer usage by MRO’s customers of  
27 Actuate’s e-reporting functionality were declining and expected to further decline in the future as  
28 MRO worked to remove Actuate’s software from MRO’s Maximo product. However, MRO

made no mention at the time of its discussions with IBM, IBM's potential acquisition of MRO, or the potential for the integration of MRO software into IBM's widely disseminated Tivoli product line, events that would lead to distribution of Actuate software vastly beyond any level that could be reasonably anticipated based on historical distribution levels and MRO's representations regarding actual and expected distribution and usage of Actuate's software. Had MRO told Actuate the full and complete facts, which were known only to MRO and Actuate could not have discovered, Actuate would not have entered into an amendment to the written license agreement on the terms that it did.

### **JURISDICTION AND VENUE**

4. This action arises under the Copyright Act, 17 U.S.C. § 101 *et seq.* This Court has subject matter jurisdiction over the claims asserted herein under 28 U.S.C. §§ 1331 (federal question) and 1367(a) (supplemental jurisdiction).

5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 in that a substantial part of the events giving rise to the claims herein occurred in this judicial district. Defendant IBM is subject to personal jurisdiction in this district because IBM is found in this district, transacts substantial business in this district, and has agents in this district. Defendant MRO is subject to personal jurisdiction in this district because it is found in this district and has transacted substantial business in this district. Further, venue and jurisdiction in this district are proper pursuant to the terms of the written license agreement to which MRO and IBM are parties.

### **INTRADISTRICT ASSIGNMENT**

6. Pursuant to Civil Local Rule 3-5(b), for purposes of Civil Local Rule 3-2(c), this action arises in San Mateo County, where Plaintiff is located and where a substantial part of the actions, events, and statements which give rise to the claims described below occurred.

### **PARTIES**

7. Plaintiff Actuate is a corporation incorporated in the state of Delaware with its headquarters at 2207 Bridgepointe Parkway, Suite 500, San Mateo, California. Plaintiff develops and licenses enterprise computer software aimed at meeting a broad spectrum of business needs, including information delivery through the provision of sophisticated report development and

1 design tools, as well as interactive viewing applications. Actuate's products are licensed  
2 domestically and internationally to a broad array of enterprise customers and government entities.

3 8. Plaintiff is informed and believes, and on that basis alleges, that Defendant MRO  
4 Software, Inc. is a Massachusetts corporation with its principal place of business in Bedford,  
5 Massachusetts. MRO is a wholly owned subsidiary of IBM.

6 9. Plaintiff is informed and believes, and on that basis alleges, that Defendant IBM is  
7 a Delaware corporation with its principal place of business in Armonk, New York. IBM has  
8 represented itself to be MRO's successor-in-interest and therefore is liable under successor  
9 liability for any and all acts and omissions of MRO.

### 10 GENERAL ALLEGATIONS

#### 11 Actuate's Copyright Interest in its Software

12 10. Actuate has invested millions of dollars and many years of work into the  
13 development of its award-winning business intelligence software products.

14 11. Actuate has complied with the Copyright Act, 17 U.S.C. §101 *et seq.*, and has  
15 obtained from the Register of Copyrights a Certificate of Registration for Actuate's iServer and  
16 eSpreadsheet software programs and related materials. A true and correct copy of the Certificate  
17 for "Actuate 7" is attached hereto as Exhibit A (Reg. No. TX 006348874). A true and correct  
18 copy of the Certificate for "Actuate 7 SP1" is attached hereto as Exhibit B (Reg. No. TX  
19 006348875). A true and correct copy of the Certificate for "Actuate 7 SP2" is attached hereto as  
20 Exhibit C (Reg. No. TX 006348876). A true and correct copy of the Certificate for "Actuate 9" is  
21 attached hereto as Exhibit D (Reg. No. TX 006862866). A true and correct copy of the  
22 Certificate for "Actuate 9 SP1" is attached hereto as Exhibit E (Reg. No. TX 006862880). A true  
23 and correct copy of the Certificate for "Actuate 9 SP2" is attached hereto as Exhibit F (Reg. No.  
24 TX 006862885). A true and correct copy of the Certificate for "Actuate 9 SP3" is attached hereto  
25 as Exhibit G (Reg. No. TX 006863869).

26 12. Actuate has placed a copyright notice on all versions of Actuate's software and  
27 related materials that it has published, licensed or distributed. Any copies of Actuate's software  
28 and related materials distributed by Actuate have been published in strict conformity with the

1 provisions of the Copyright Act, 17 U.S.C. §101 *et seq.*

2 13. Actuate is currently and at all relevant times has been the sole owner of all right,  
3 title, and interest in and to the copyrights in Actuate's iServer and eSpreadsheet software  
4 programs and related materials.

5 14. To protect its copyrighted software, Actuate uses a license key/file system. An  
6 authorized user of Actuate's software obtains a license key/file along with the licensed software  
7 package. Depending on the type of copyright license that an end user purchases, the license  
8 key/file can enable or disable certain components or functionalities of the program, and can limit  
9 the number of computer processors and/or operating systems that can run the program. The user  
10 enters the unique license key/file upon installation to obtain only the quantity, components and  
11 functionalities of licensed software to which the user is entitled.

12 **The License Agreement with MRO**

13 15. In December 2000, Plaintiff Actuate entered into a written agreement titled  
14 "E.Business Application Partner Software License Agreement" (the December 2000 Software  
15 License Agreement and its subsequent amendments are collectively referred to herein as the  
16 "License Agreement") with MRO, entitling MRO to use certain Actuate software and to sell  
17 licenses to MRO products incorporating certain Actuate software in exchange for MRO's  
18 payment of license and maintenance fees to Plaintiff.

19 16. Among other things, the License Agreement provided that MRO had the limited  
20 right to market, distribute and sublicense Actuate software for use with Partner Products that it  
21 distributes to new and existing end users during the term of the License Agreement. The License  
22 Agreement defines "Partner Products" to mean the MRO software products, specified in an  
23 exhibit to the License Agreement (which exhibit was periodically amended). MRO was not  
24 entitled to distribute or use Actuate's software except as provided by the License Agreement.

25 17. MRO distributed the Actuate software with, among other things, its Maximo line  
26 of products, and the Maximo products were included within the License Agreement's definition  
27 of Partner Products. Among other things, Maximo utilized Actuate's software to create reports  
28 from the data stored in the Maximo database, including the creation of graphics out of the data to

1 be reported to users, *e.g.*, pie charts, spread sheets, and dashboards.

2 18. The License Agreement addressed the situation in which MRO should acquire,  
3 merge with or be acquired by a third party during the term of the License Agreement. In this  
4 situation, the License Agreement provided that use of Actuate's software would continue to be  
5 limited to "Partner Products" and their natural successors, which were limited to certain products  
6 internally developed by MRO as provided by the License Agreement, as amended. However,  
7 MRO could elect to extend its rights under the License Agreement to permit the use of Actuate  
8 software in connection with third-party products by agreeing to pay additional licensee fees as  
9 defined by the License Agreement.

10 19. Following its initial execution, Plaintiff, MRO and IBM (as successor in interest to  
11 MRO) amended the License Agreement five (5) times. Amendment No. 4, which was effective  
12 as of June 30, 2006, gave MRO the unilateral option to extend the term of the License Agreement  
13 until December 31, 2011. IBM, as successor in interest to MRO, exercised its option to extend  
14 the term of the License Agreement to December 31, 2011.

15 **MRO's Misrepresentations to Actuate and IBM's Acquisition of MRO**

16 20. The License Agreement between MRO and Actuate allowed MRO to distribute an  
17 unlimited number of copies of the specified Actuate software for a flat fee, provided the  
18 conditions of the license were met. This type of "all you can eat" license was not typical for  
19 Actuate, which more commonly enters into licenses that provide for payment on a per-copy-  
20 distributed basis. It is of paramount importance when considering an unlimited distribution  
21 license that Actuate have an understanding of the size of the licensee's customer base and an  
22 estimate of the expected distribution of its software allowed by the license, lest the license result  
23 in over-distribution and devaluation of Actuate's software.

24 21. In 2006, as the expiration of the License Agreement (as initially amended) drew  
25 near, Actuate had to consider whether and on what terms it should extend the term. In a series of  
26 telephonic and in-person meetings and in other communications occurring between May 13 and  
27 June 30 of 2006 relating to the negotiation of the terms of Amendment No. 4, MRO's  
28 representatives, including Gary Freeman, MRO's Vice President of Advanced Technologies, and



1 Peter Rice, MRO's Executive Vice President, Finance & Administration, CFO & Treasurer,  
2 represented to Actuate's representatives, including Peter Hoopes, Actuate's Vice President of  
3 North American Operations, and Kevin Pennington, an Actuate sales representative responsible  
4 for the MRO account, that MRO's distribution of Actuate's software and consumer usage by  
5 MRO's customers of Actuate's e-reporting functionality were declining and were expected to  
6 further decline in the future as MRO worked to remove Actuate's software from MRO's Maximo  
7 product.

8 22. In reliance on MRO's representations that it expected usage of Actuate's software  
9 to decline, Actuate agreed to renew the license on the same "all you can eat" terms, and with a  
10 significantly discounted price. Actuate and MRO entered into Amendment No. 4 effective as of  
11 June 30, 2006.

12 23. On August 2, 2006, IBM announced it acquired MRO. According to proxy  
13 statements filed on August 28, 2006 with the Securities and Exchange Commission, during the  
14 time that MRO was negotiating with Actuate regarding Amendment No. 4 and executing that  
15 amendment, it was simultaneously in deep discussions with IBM regarding an acquisition. In  
16 May 2006, MRO executives met with IBM's representatives in Boston and afterwards  
17 commenced merger discussions and due diligence. On June 20, 2006, MRO and IBM  
18 representatives met again in Boston and the next day IBM submitted a non-binding offer for  
19 MRO. For the next several weeks members of MRO's management team met with  
20 representatives of IBM, including a meeting on July 6, 2006 between MRO's President and Chief  
21 Executive Officer, Norman E. Drapeau, Jr., and IBM's Managing Director, Archie Colburn, as  
22 well as IBM's General Manager of IBM's Tivoli Software Division, Al Zollar.

23 24. At the time that Actuate was in discussions with MRO regarding Amendment No.  
24 4, Actuate had no knowledge or information about MRO's discussions and plans with IBM.  
25 MRO made no mention at the time of its discussions with IBM, IBM's potential acquisition of  
26 MRO, or the potential for the integration of MRO software into IBM's widely disseminated  
27 Tivoli product, events that would lead to distribution of Actuate software vastly beyond any level  
28 that could be reasonably anticipated based on historical distribution levels.

25. Actuate would not have agreed to the terms of Amendment No. 4, including the “all you can eat” license” for a significantly discounted price, had it known that MRO was engaged in serious acquisition discussions with IBM. Actuate could not reasonably have discovered that MRO was planning to be acquired by IBM, as this information was not publicly available and was not disclosed by MRO.

26. Upon information and belief, MRO assigned the License Agreement, as amended, to IBM in connection with IBM’s acquisition of MRO by way of a reverse triangular merger.

**IBM Uses Actuate’s Software Without Authorization in Connection with IBM’s Tivoli Software**

27. On information and belief: (a) the purpose of IBM’s acquisition of MRO was to connect MRO’s Maximo product (and thus Actuate’s software) to IBM’s Tivoli management system software; (b) IBM’s connection of Maximo (and thus Actuate’s software) to IBM’s Tivoli management system software has allowed IBM to sell more software to IBM’s existing customers; and (c) IBM Global Services has put together software systems for customers, further extending the application of Tivoli and Maximo software (and thus utilizing Actuate’s software). Numerous public statements by MRO and IBM, including statements in various sets of product literature, support the above conclusions.

28. In a letter to its customers dated August 8, 2006 which included FAQs and a press release (which were included in MRO’s proxy statements filed with the Securities & Exchange Commission), MRO stated as follows:

- “Following completion of the acquisition, IBM intends to . . . incorporate MRO software technology into IBM’s Tivoli software offerings . . . .”
- “IBM will leverage MRO’s software portfolio and management consultants to provide clients with a single approach to managing all industrial and IT assets. Since MRO’s offerings are built on a modern architecture, they can easily be integrated into IBM’s Service Oriented Architecture (SOA)-based capabilities, including business process management and IT service management.”
- “IBM’s acquisition of MRO . . . provide[s] customers with a consistent, comprehensive set of asset management solutions and services. MRO asset management technology and consulting services will be integrated into IBM Software and IBM Global Services offerings. As a result of the acquisition of



1 MRO, IBM will be the only company to provide the solution to this  
2 convergence of IT and industrial assets.”

3 29. Press releases, reports and other public communications (some of which were  
4 included in MRO’s proxy statements filed with the SEC) indicate that Al Zollar, IBM’s General  
5 Manager for Tivoli Software, has stated as follows:

- 6 • “This acquisition will provide companies with a single view into all of their  
7 assets, helping them to maximize efficiencies, drive productivity and innovate  
8 business processes across the enterprise.”
- 9 • “. . . IBM has increased Maximo’s research and development budget by 50%  
10 to seek out better ways to develop the MRO/IBM integration.”
- 11 • “. . . the companies probably overlap on most of these large customers so it’s  
12 not necessarily a customer gain for IBM, although IBM may be able to sell  
13 more of them on buying Tivoli software.”
- 14 • “Upon closing, MRO’s Software’s operations and technology will be rapidly  
15 integrated into Tivoli.”
- 16 • “Combining MRO Software, Inc.’s products with IBM’s will provide our  
17 customers with enhanced capabilities [and] allow for increased IT operations  
18 efficiency and minimized IT costs.”

19 30. Chip Drapeau, MRO’s President and Chief Executive Officer, has said in MRO’s  
20 proxy statements filed with the SEC: “. . . By integrating our asset management capabilities with  
21 IBM, a leader in IT management software and asset management consulting, we can offer our  
22 customers a complete asset management solution on a global scale.”

23 31. The utilization of Actuate software in connection with IBM’s Tivoli software,  
24 without additional payment by IBM, was not authorized by the License Agreement or its  
25 Amendments. IBM’s Tivoli software does not represent an expansion of the authorized MRO  
26 Partner Product arising from “internal development,” nor is it a “natural successor” to the MRO  
27 Partner Product. Rather, IBM has distributed vast amounts of Actuate software in connection  
28 with the Tivoli software when it had no authority to do so.

**IBM’s Unauthorized Posting of Actuate’s Software on the Internet Without Restriction**

32. At an unknown point in time, IBM began posting without authorization certain

1 Actuate software and related materials, including development tools, documentation and license  
2 keys. Actuate issued the version 7 and version 9 keys to MRO on September 2, 2003 and  
3 November 7, 2007, respectively. The license keys posted by IBM enable Actuate's software to  
4 be installed on an unlimited basis and further allow anyone who has a copy of certain Actuate  
5 software to enable additional software components that are extremely valuable and could more  
6 than double the price of the software for each computer processor (CPU) to the end-user.

7 33. In or about the beginning of December 2008, Actuate found its flagship software  
8 product, iServer (version 9, Service Pack 2) on IBM's publicly available website—  
9 www.ibm.com—without any control on its distribution, or any limit on the use of the available  
10 software. IBM also posted without authorization and in an uncontrolled manner all necessary  
11 development tools (including eSpreadsheet Designer 9SP2 and eRD Pro), documentation, and a  
12 license key/file that enables Actuate's software to be installed on a stand alone basis, on an  
13 unlimited number of CPUs, on the AIX, HP-UX and Solaris operating systems, and on an  
14 unlimited number of server nodes. The version 9 license key/file posted without authorization  
15 also allows anyone who has a copy of the version 9 Actuate iServer installation to enable  
16 additional Actuate software, including iServer Base, eReport Option, eSpreadsheet Option,  
17 eSpreadsheet Engine, Page Level Security Option, and Actuate Query Option. In addition, if the  
18 license key/file was applied to Actuate iServer 9, it allowed upgrades to iServer 9SP1, iServer  
19 9SP2, and 9SP3Fix5. These additional options and upgrades significantly increase the value of  
20 the software and when made available, would increase the price of the basic software to the end  
21 user by 100% or more for each CPU. The eSpreadsheet Designer product is a design tool that  
22 enables a developer to design and build an eSpreadsheet report executable which could be  
23 deployed along with Actuate's iServer software to produce an eSpreadsheet report as a result.  
24 Even without Actuate's iServer, the combination of the eSpreadsheet Designer with a generic  
25 application server would allow generation and viewing of eSpreadsheet reports by multiple users.  
26 In order for the eSpreadsheet report executable to work with iServer, a user's copy of iServer  
27 would have to be activated with the eSpreadsheet option for iServer, which could be  
28 accomplished with the version 9 iServer license key/file made available by IBM without

1 authorization.

2 34. Actuate's original software and related materials had been securely distributed to  
3 IBM under the License Agreement and IBM had no right under the License Agreement to post  
4 such software and related materials on its publicly available website for anyone to download in an  
5 uncontrolled and unlimited manner. Despite IBM's obligations under the License Agreement,  
6 Actuate's software and related materials were made readily accessible to any Internet user  
7 without any control, limit, authentication, registration or validation. Indeed, the IBM webpage  
8 that contained Plaintiff's software and related materials could be found using a simple Google  
9 search containing non-specific key words.

10 35. Actuate first learned of this situation on December 3, 2008. After documenting the  
11 extent of the situation, Actuate immediately informed IBM of the situation and demanded an  
12 immediate response. In response, IBM assured Actuate that all of Actuate's software and related  
13 materials were no longer publicly and freely available online in an uncontrolled and unlimited  
14 manner.

15 36. Despite telling Actuate that it would undertake a thorough investigation of the  
16 unauthorized posting of Actuate's software and related materials, IBM has been unable or  
17 unwilling to provide Actuate with any verifiable data concerning this serious incident.

18 37. Contrary to IBM's assurances, in May 2009, five months after Actuate had  
19 notified IBM of its infringing actions, Actuate found additional copies of its software and related  
20 materials, including its version 7 iServer license key/file, Actuate's eSpreadsheet Designer  
21 product, eSpreadsheet Engine product, development tools, and documentation, publicly and freely  
22 available online at www.ibm.com for anyone to download and use in an uncontrolled and  
23 unlimited manner. The version 7 license key/file posted without authorization allows anyone  
24 who has a copy of the Actuate version 7 iServer installation to enable additional Actuate  
25 software, including iServer Base, eReport Option, eSpreadsheet Option, eSpreadsheet Engine,  
26 Page Level Security Option, and Actuate Query Option on an unlimited number of CPUs. In  
27 addition, if the license key/file was applied to Actuate iServer 7, it allowed upgrades to iServer  
28 7SP1 and iServer 7SP2. These additional options and upgrades significantly increase the value of

1 the software and when made available, would increase the price of the basic software to the end  
 2 user by 100% or more for each CPU. The eSpreadsheet Designer product is a design tool that  
 3 enables a developer to design and build an eSpreadsheet report executable which could be  
 4 deployed along with Actuate's iServer software to produce an eSpreadsheet report as a result.  
 5 Even without Actuate's iServer, the combination of the eSpreadsheet Designer with a generic  
 6 application server would allow generation and viewing of eSpreadsheet reports by multiple users.  
 7 In order for the eSpreadsheet report executable to work with iServer, a user's copy of iServer  
 8 would have to be activated with the eSpreadsheet option for iServer, which could be  
 9 accomplished with the version 7 iServer license key/file made available by IBM without  
 10 authorization.

11 38. On May 11, 2009, Actuate requested that IBM immediately take down the  
 12 webpage containing Actuate's eSpreadsheet Designer product software and version 7 iServer  
 13 license key/file. Further, Actuate demanded that IBM preserve all data associated with the  
 14 unauthorized webpage and any other webpages where IBM may be posting Actuate software and  
 15 related materials without authorization by Actuate in an unrestricted and uncontrolled manner.

16 **FIRST CLAIM FOR RELIEF**  
 17 **By Actuate Against MRO and IBM**  
 18 **(Breach of Contract)**

19 39. Plaintiff Actuate realleges each and every allegation set forth in Paragraphs 1  
 20 through 38, and incorporates them by reference herein.

21 40. The License Agreement is a valid and enforceable written contract.

22 41. The License Agreement is a contract to which Defendants IBM and MRO are  
 23 parties and through which Actuate provided Defendants with a limited license to market, license  
 24 and distribute the specified Actuate software in exchange for Defendants' payment of fees to  
 25 Actuate.

26 42. Actuate has performed each and all of the conditions, covenants, promises, and  
 27 obligations imposed upon it by the terms of the License Agreement except those conditions,  
 28 covenants, promises, and obligations excused by Defendants' material breach of the License  
 Agreement.

43. Pursuant to the License Agreement, Defendants were obligated to pay additional fees for the distribution and use of Actuate's software in connection with third party, non-MRO software.

44. On information and belief, Defendants intended and have enabled MRO's Maximo software (and thus Actuate's software) to work in connection with non-MRO software, which includes IBM's Tivoli management system software.

45. Defendants have refused to disclose to Actuate the revenue amounts for their products that are currently identified as being used in connection with MRO's Maximo software (and thus Actuate's software), including the Tivoli management system software.

46. On information and belief, Defendants have substantially and materially breached the License Agreement by:

- (a) failing to pay all fees and amounts owed to Actuate under the License Agreement;
- (b) incorrectly calculating and underpaying fees and other amounts owed to Actuate; and
- (c) distributing and using licenses to Actuate's software in a manner other than that permitted by the License Agreement.

47. As a direct and proximate result of these material breaches by Defendants, Actuate has suffered monetary damages in an amount not yet ascertained.

## **SECOND CLAIM FOR RELIEF**

### **By Actuate against IBM**

#### **(Direct and Contributory Copyright Infringement: 17 U.S.C. §§ 101 *et seq.*)**

48. Plaintiff Actuate realleges each and every allegation set forth in Paragraphs 1 through 38, and incorporates them by reference herein.

49. By its actions alleged above, Defendant IBM has directly infringed and will continue to infringe Actuate's copyrights in its software and related materials by reproducing, distributing and/or publicly displaying portions of Actuate's software and related materials.

50. Further, IBM has contributorily infringed and will continue to contributorily infringe Actuate's copyrights in its software and related materials by knowingly inducing, causing

1 and materially contributing to the infringement of plaintiffs' exclusive rights by others and  
2 inducing infringement by third parties.

3 51. On information and belief, the infringing acts of IBM have been deliberate and  
4 willful, and in utter disregard of Actuate's rights. On information and belief, IBM's acts were  
5 committed for the purpose of commercial gain.

6 52. As a result of IBM's actions, Actuate has suffered and will continue to suffer  
7 irreparable harm. Actuate is informed and believes and thereon alleges that IBM may commit  
8 further violations of the copyright laws and unless restrained and enjoined, will do so. Actuate  
9 will suffer irreparable harm if IBM is permitted to continue freely distributing Actuate's software  
10 and flaunting the copyright protections on Actuate's software. Actuate's remedy at law is not  
11 adequate by itself to compensate it for the harm inflicted and threatened by the IBM. Therefore,  
12 Actuate is entitled to immediate injunctive relief restraining IBM, its officers, agents and  
13 employees, and all persons acting in concert with it, from engaging in further such acts in  
14 violation of the copyright laws.

15 53. Actuate is further entitled to recover from IBM the damages it has sustained and  
16 will sustain as a result of IBM's wrongful acts as hereinabove alleged. The amount of such  
17 damages will be proven at trial. Actuate is further entitled to recover from IBM the gains, profits  
18 and advantages it has obtained as a result of its wrongful acts described above. Alternatively,  
19 upon its election, Actuate is entitled to recover statutory damages.

### 20 **THIRD CLAIM FOR RELIEF**

#### 21 **By Actuate against IBM**

#### 22 **(Circumvention of Access Controls and Distribution of Circumvention Tools: 17 U.S.C. § 1201 *et seq.*)**

23 54. Plaintiff Actuate realleges each and every allegation set forth in Paragraphs 1  
24 through 38, and incorporates them by reference herein.

25 55. Actuate employs certain technological measures, including the use of license  
26 keys/files that (a) effectively control access to its software and (b) effectively protect Actuate's  
27 copyright rights.  
28



56. The license keys/files posted by IBM without authorization on its publicly available website, which Actuate learned of in December 2008 and again in May 2009, enabled Actuate's iServer software program to be installed on an unlimited number of CPU cores, on a number of major operating system, and on an unlimited server nodes. The same license key/file posted by IBM without authorization also enabled anyone who had a copy of Actuate's v7 iServer or Actuate's v9 iServer to gain unauthorized access to additional Actuate software products.

57. On information and belief, IBM circumvented a technological measure and/or trafficked in a circumvention technology and device within the meaning of 17 U.S.C. 1201 *et seq.* when it repeatedly posted unrestricted license keys to Actuate's software on its publicly available website without authorization from Actuate.

58. As a result of IBM's wrongful acts, Actuate has suffered and will continue to suffer damages that will be proven at trial. Actuate is further entitled to recover from IBM the gains, profits and advantages it has obtained as a result of its wrongful acts as hereinabove described. Actuate will prove the full extent of the gains, profits, and advantages IBM has obtained by reason of its acts of circumvention and trafficking at trial. Alternatively, upon its election, Actuate is entitled to recover statutory damages.

**FOURTH CLAIM FOR RELIEF**  
**By Actuate against MRO and IBM**  
**(Fraudulent Concealment)**

59. Plaintiff Actuate realleges each and every allegation set forth in Paragraphs 1 through 38, and incorporates them by reference herein.

60. In 2006, MRO and Actuate were in a business relationship whereby Actuate licensed its software to MRO for distribution and/or use by end-users in exchange for payment of certain fees pursuant to the License Agreement.

61. In 2006, as the expiration of the License Agreement drew near, Actuate and MRO entered into negotiations to extend MRO's rights to market, license and distribute Actuate software with an Amendment No. 4 to the License Agreement. During these negotiations, MRO made certain representations and disclosed certain facts to Actuate but intentionally failed to disclose others important facts, making MRO's representations and disclosure deceptive and

1 misleading.

2         62. Specifically, in a series of telephonic and in-person meetings (including at least  
3 one meeting occurring at MRO's then-current facilities in Bedford, Massachusetts), and in other  
4 communications occurring between May 13 and June 30 of 2006 relating to the negotiation of the  
5 terms of Amendment No. 4, MRO's representatives, including Gary Freeman, MRO's Vice  
6 President of Advanced Technologies, and Peter Rice, MRO's Executive Vice President, Finance  
7 & Administration, CFO & Treasurer, represented to Actuate's representatives, including Peter  
8 Hoopes, Actuate's Vice President of North American Operations, and Kevin Pennington, an  
9 Actuate sales representative responsible for the MRO account, that MRO's distribution of  
10 Actuate's software and consumer usage by MRO's customers of Actuate's e-reporting  
11 functionality were declining and expected to further decline in the future as MRO worked to  
12 remove Actuate's software from MRO's products.

13         63. During the negotiations regarding the terms of Amendment No. 4, none of MRO's  
14 representatives made any mention to Actuate of MRO's discussions with IBM, MRO's plans for  
15 IBM's acquisition of MRO, or the potential for the integration of MRO software into IBM's  
16 widely disseminated Tivoli product, events that would lead to distribution of Actuate software  
17 vastly beyond any level that could be reasonably anticipated based on historical distribution levels  
18 and MRO's representations regarding actual and expected distribution and usage of Actuate's  
19 software.

20         64. During the negotiations regarding the terms of Amendment No. 4, Actuate did not  
21 know and could not reasonably have learned of the concealed facts concerning MRO's  
22 discussions and plans with IBM and likely increase to the actual and expected distribution and  
23 usage of Actuate's software. Had Actuate known the full and complete facts concealed by MRO,  
24 Actuate would not have entered into Amendment No. 4 on the terms that it did. This potential  
25 enormous expansion of the distribution of Actuate's software was a highly material fact that, had  
26 it been communicated to Actuate, would have very significantly impacted the terms on which  
27 Actuate was willing to extend rights to MRO to license, market and distribute Actuate software.

28         65. Having represented to Actuate that MRO expected usage of Actuate's software by

its customers to decline, MRO had a duty to communicate the fact that MRO was in the course of negotiating its acquisition by IBM, an event that would dramatically increase the distribution of Actuate's software. Without this disclosure, MRO's representation that usage was expected to decline was materially misleading.

66. On information and belief, MRO intended to deceive and mislead Actuate by concealing the facts regarding MRO's discussions and plans with IBM and likely increase to the actual and expected distribution and usage of Actuate's software, facts which were known only to MRO and which Actuate could not have discovered.

67. Actuate reasonably relied on MRO's concealment and deception.

68. MRO's concealment was a substantial factor in causing Actuate's harm.

69. Actuate was harmed by MRO's concealment and deception and has suffered damages in an amount to be proved at trial.

70. IBM has represented itself to be MRO's successor-in-interest and therefore is liable under successor liability for any and all acts and omissions of MRO.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Actuate prays for judgment against MRO and IBM as follows:

- A. Preliminary and permanent injunctive relief under 17 U.S.C. § 502, enjoining Defendant IBM, its officers, servants, employees, and all persons acting in concert with it or them, from directly or indirectly engaging in acts that infringe Plaintiff's copyrights;
- B. Preliminary and permanent injunctive relief under 17 U.S.C. § 1203, enjoining Defendant IBM, its officers, servants, employees, and all persons acting in concert with it or them, from directly or indirectly engaging in acts that (1) circumvent Actuate's technological measures that control access to its software and/or (2) amount to trafficking in circumvention technology that controls access to Actuate's software and/or protects Actuate's copyright rights;
- C. An award of damages to Plaintiff Actuate for MRO's and IBM's breach of the License Agreement in an amount to be determined at trial;

- 1 D. An award to Plaintiff Actuate of its actual damages under 17 U.S.C. § 504 or, at  
 2 Plaintiff Actuate's discretion and election, an award under 17 U.S.C. § 504(c) of  
 3 statutory damages, the statutory damages being in the amount of \$150,000 for each  
 4 infringement of Plaintiffs' works, in view of Defendant IBM's willful  
 5 infringement;  
 6 E. An award to Plaintiff Actuate under 17 U.S.C. § 1203 of its actual damages or, at  
 7 Plaintiff Actuate's discretion and election, an award of statutory damages;  
 8 F. An award to Plaintiff Actuate of its actual damages and exemplary damages for  
 9 Defendant MRO's fraudulent concealment;  
 10 G. For pre-judgment interest in an amount to be determined at trial;  
 11 H. An award of the costs, expenses, and attorneys' fees incurred by Plaintiff Actuate  
 12 herein pursuant to pursuant to 17 U.S.C. §§ 505, 1203 and/or by contract; and  
 13 I. Such other and further relief as the Court deems proper and just.

14 Dated: December 16, 2009

FENWICK & WEST LLP

16 By: Rodger R. Cole  
 17 Rodger R. Cole  
 18 Attorneys for Plaintiff  
 19 ACTUATE CORPORATION

20  
 21 **DEMAND FOR JURY TRIAL**

22 Plaintiff Actuate hereby demands a jury trial on all issues.

23 Dated: December 16, 2009

FENWICK & WEST LLP

25 By: Rodger R. Cole  
 26 Rodger R. Cole  
 27 Attorneys for Plaintiff  
 28 ACTUATE CORPORATION

CERTIFICATION OF INTERESTED ENTITIES OR PERSONS

Pursuant to Civil L.R. 3-16, the undersigned certifies that the following listed persons, associations of persons, firms, partnerships, corporations (including parent corporations) or other entities (i) have a financial interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a non-financial interest in that subject matter or in a party that could be substantially affected by the outcome of this proceeding: None.

Dated: December 16, 2009

FENWICK & WEST LLP

By:   
Rodger R. Cole

Attorneys for Plaintiff  
ACTUATE CORPORATION

27287/00401/LIT/1300236.11

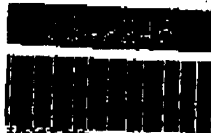
FENWICK & WEST LLP  
ATTORNEYS AT LAW  
MOUNTAIN VIEW

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**EXHIBIT A**



Copyright  
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CB  
NY



T. 6-348-874



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JUN 27 2006

in to City Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1

**TITLE OF THIS WORK** ▼

Actuats 7.0

**PREVIOUS OR ALTERNATIVE TITLES** ▼

**PUBLICATION AS A CONTRIBUTION** If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work ▼

If published in a periodical or serial give: Volume ▼ Number ▼ Issue Date ▼ On Page ▼

2

**NAME OF AUTHOR** ▼

a Actuats Corporation

Was this contribution to the work a "work made for hire"?

☒ Yes

☐ No

**AUTHOR'S NATIONALITY OR DOMICILE**

Name of Country

OR Citizen of ▼

Domiciled in: U.S.A.

**DATES OF BIRTH AND DEATH**

Year Born ▼

Year Died ▼

**WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK**

Anonymous? ☐ Yes ☒ No

Pseudonym? ☐ Yes ☒ No

If the answer to either of these questions is "Yes," see detailed instructions.

**NATURE OF AUTHORSHIP** Briefly describe nature of material created by this author in which copyright is claimed. Computer program

**NOTE**

Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). For any part of this work that was "made for hire" check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part, and leave the space for dates of birth and death blank.

**NAME OF AUTHOR** ▼

b

Was this contribution to the work a "work made for hire"?

☐ Yes

☐ No

**AUTHOR'S NATIONALITY OR DOMICILE**

Name of Country

OR Citizen of ▼

Domiciled in:

**DATES OF BIRTH AND DEATH**

Year Born ▼

Year Died ▼

**WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK**

Anonymous? ☐ Yes ☐ No

Pseudonym? ☐ Yes ☐ No

If the answer to either of these questions is "Yes," see detailed instructions.

**NATURE OF AUTHORSHIP** Briefly describe nature of material created by this author in which copyright is claimed.

**NAME OF AUTHOR** ▼

c

Was this contribution to the work a "work made for hire"?

☐ Yes

☐ No

**AUTHOR'S NATIONALITY OR DOMICILE**

Name of Country

OR Citizen of ▼

Domiciled in:

**DATE OF BIRTH AND DEATH**

Year Born ▼

Year Died ▼

**WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK**

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Pseudonym? ☐ Yes ☐ No

If the answer to either of these questions is "Yes," see detailed instructions.

**NATURE OF AUTHORSHIP** Briefly describe nature of material created by this author in which copyright is claimed.

3

**YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED**

2003

This information must be given in all cases.

**DATE AND NATION OF FIRST PUBLICATION** Complete this information ONLY if this work has been published. Month: April Year: 2003 U.S.A.

**DATE OF THIS PARTICULAR WORK** Day: 30 Year: 2003

4

**COPYRIGHT CLAIMANT(S)** Name and address must be given even if the claimant is the same as the author given in space 2. ▼

Actuats Corporation  
701 Gateway Boulevard  
South San Francisco, CA 94080

**TRANSFER** If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

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CHECKED BY	
<input type="checkbox"/> CORRESPONDENCE	FOR COPYRIGHT OFFICE USE ONLY
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PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

☐ Yes ☒ No If your answer is "Yes," why is another registration being sought? (Check appropriate box.)a. ☐ This is the first published edition of a work previously registered in unpublished form.b. ☐ This is the first application submitted by this author as copyright claimant.c. ☐ This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give Previous Registration Number &gt;

Year of Registration &gt;

## DERIVATIVE WORK OR COMPILE

Presenting Material Identify any presenting work or work that this work is based on or incorporates.

Previously published versions of Actuate; third party drivers, graphics packages, libraries and optional features.

Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed.

Revisions and additional text of computer program.

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/ Apt/City/State/ZIP

Carol Anne Been, Sonnenschein Nath & Rosenthal LLP  
7800 Sears Tower, 233 South Wacker Drive  
Chicago, Illinois 60606

Area code and daytime telephone number &gt; (312) 876-3122

Fax number &gt; (312) 876-734

Email &gt; cbeen@sonnenschein.com

CERTIFICATION I, the undersigned, hereby certify that I am the

Check only one &gt;

☐ author☐ other copyright claimant☐ owner of exclusive right(s)☒ authorized agent of Actuate Corporation

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Name of author or other copyright claimant.

owner of exclusive right(s) &gt;

Typed or printed name and date &gt; If this application gives a date of publication in space 3, do not sign and submit it before that date.

Carol Anne Been

Date &gt; 6/15/06

Handwritten signature (X) &gt;

X Carol Anne Been

Certificate will be mailed in window envelope to this address:

Name >  
Carol Anne Been, Sonnenschein Nath & Rosenthal LLP  
Number/Street/Apt >  
7800 Sears Tower, 233 South Wacker Drive  
City/State/ZIP >  
Chicago, Illinois 60606

17 U.S.C. § 506: Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by a statute shall be fined not more than \$5,000.

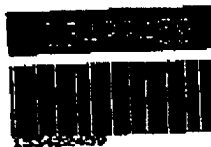
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For a Non-dramatic Literary Work  
UNITED STATES COPYRIGHT OFFICE

T: 6-348-875



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1

TITLE OF THIS WORK ▼

Actuate 7 SP1

PREVIOUS OR ALTERNATIVE TITLES ▼

PUBLICATION AS A CONTRIBUTION If this work was published as a contribution to a periodical, serial or collection, give information about the collective work in which the contribution appeared. Title of Collective Work ▼

If published in a periodical or serial give: Volume ▼ Number ▼ Issue Date ▼ On Pages ▼

2

NAME OF AUTHOR ▼

a Actuate Corporation

Was this contribution to the work a "work made for hire"? ☒ Yes ☐ No

AUTHOR'S NATIONALITY OR DOMICILE

Name of Country

OR ☐ Citizen of ▼☐ Domiciled in: U.S.A.DATES OF BIRTH AND DEATH  
Year Born ▼ Year Died ▼

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

Anonymous? ☐ Yes ☒ NoPseudonym? ☐ Yes ☒ No

If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed. ▼

Computer program

NOTE

Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). For any part of this work that was "made for hire" check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part, and leave the space for dates of birth and death blank.

NAME OF AUTHOR ▼

Was this contribution to the work a "work made for hire"? ☐ Yes ☒ No

AUTHOR'S NATIONALITY OR DOMICILE

Name of Country

OR ☐ Citizen of ▼☐ Domiciled in: ▼DATES OF BIRTH AND DEATH  
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Name of Country

OR ☐ Citizen of ▼☐ Domiciled in: ▼DATES OF BIRTH AND DEATH  
Year Born ▼ Year Died ▼

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NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed. ▼

3

a YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED  
2003

This information must be given in all cases.

b DATE AND NATION OF FIRST PUBLICATION  
Month: AUGUST  
Year: 2003  
U.S.A.

Complete this information ONLY if this work has been published.

NATION OF THIS PARTICULAR WORK  
Day: 13 Year: 2003

4

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼

Actuate Corporation  
701 Gateway Boulevard  
South San Francisco, CA 94080

TRANSFER If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

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<input type="checkbox"/> CORRESPONDENCE	FOR COPYRIGHT OFFICE USE ONLY
<input type="checkbox"/> Yes	

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PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

☐ Yes ☒ No If your answer is "Yes," why is another registration being sought? (Check appropriate box.)a. ☐ This is the first published edition of a work previously registered in unpublished form.b. ☐ This is the first application submitted by this author or copyright claimant.c. ☐ This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give: Previous Registration Number &gt;

Year of Registration &gt;

## DERIVATIVE WORK OR COMPILATION

Presenting Material Identify any preexisting work or works that this work is based on or incorporates.

Previously published versions of Actuate; third party drivers, graphics packages, libraries and optional features.

Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed.

Revisions and additional text of computer program.

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name / Address / Apt / City / State / ZIP

Carol Anne Been, Sonnenschein Nath & Rosenthal LLP  
 7800 Sears Tower, 233 South Wacker Drive  
 Chicago, Illinois 60606

Area code and daytime telephone number &gt; (312) 876-3122

Fax number &gt; (312) 876-734

Email &gt; cbeen@sonnenschein.com

CERTIFICATION I, the undersigned, hereby certify that I am the

Check only one &gt;

☐ author☐ other copyright claimant☐ owner of exclusive right(s)

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

If authorized agent of: Actuate Corporation

Name of author or other copyright claimant

owner of exclusive right(s)

Typed or printed name and date &gt; If this application gives a date of publication in space 3, do not sign and submit it before that date.

Carol Anne Been

Date &gt; 6/15/06

Handwritten signature (X) &gt;

X

Certificate will be mailed in window envelope to this address:

Name >  
 Carol Anne Been, Sonnenschein Nath & Rosenthal LLP  
 Instructions >  
 7800 Sears Tower, 233 South Wacker Drive  
 City >  
 Chicago, Illinois 60606

1. I have paid the necessary fee.	2. I have paid the necessary fee.
3. I have paid the necessary fee.	4. I have paid the necessary fee.
5. I have paid the necessary fee.	6. I have paid the necessary fee.
7. I have paid the necessary fee.	8. I have paid the necessary fee.
9. I have paid the necessary fee.	10. I have paid the necessary fee.

17 U.S.C. § 405(a): Any person who knowingly makes a false representation of a material fact in an application for copyright registration provided for by 17 U.S.C. § 405(a), shall be fined not more than \$2,500.

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**1**

**TITLE OF THIS WORK** ▼  
Actuate 7 SP2 LP

**PREVIOUS OR ALTERNATIVE TITLES** ▼

**PUBLICATION AS A CONTRIBUTION** If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. **Title of Collective Work** ▼

If published in a periodical or serial give: **Volume** ▼ **Number** ▼ **Issue Date** ▼ **On Pages** ▼

**2**

**a** **NAME OF AUTHOR** ▼  
Actuate Corporation

**DATE OF BIRTH AND DEATH**  
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?  
☒ Yes  
☐ No

**AUTHOR'S NATIONALITY OR DOMICILE**  
Name of Country  
OR  
Citizen of ▼ U.S.A.  
Domiciled in ▼

**WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK**  
Anonymous? ☐ Yes ☒ No  
Pseudonymous? ☐ Yes ☒ No  
If the answer to either of these questions is "Yes," see detailed instructions.

**NATURE OF AUTHORSHIP** Briefly describe nature of material created by this author in which copyright is claimed. ▼  
Computer program

**NAME OF AUTHOR** ▼

**DATE OF BIRTH AND DEATH**  
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?  
☐ Yes  
☐ No

**AUTHOR'S NATIONALITY OR DOMICILE**  
Name of Country  
OR  
Citizen of ▼  
Domiciled in ▼

**WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK**  
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Pseudonymous? ☐ Yes ☐ No  
If the answer to either of these questions is "Yes," see detailed instructions.

**NATURE OF AUTHORSHIP** Briefly describe nature of material created by this author in which copyright is claimed. ▼

**NAME OF AUTHOR** ▼

**DATE OF BIRTH AND DEATH**  
Year Born ▼ Year Died ▼

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**3**

**a** **YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED** This information must be given in all cases.  
2003

**b** **DATE AND NATION OF FIRST PUBLICATION** Complete this information ONLY if this work has been published.  
Month ▼ December  
Day ▼ 22 Year ▼ 2003  
U.S.A.

**DATE OF THIS PARTICULAR WORK**  
Day ▼ 22 Year ▼ 2003

**4**

**COPYRIGHT CLAIMANT(S)** Name and address must be given even if the claimant is the same as the author given in space 2. ▼

Actuate Corporation  
701 Gateway Boulevard  
South San Francisco, CA 94080

**TRANSFER** If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

**A** **APPLICATION RECEIVED**  
JUN 27, 2006

**C** **DEPOSIT RECEIVED**

**T** **TO DEPOSIT RECEIVED**

June 27, 2006

**F** **INDEX RECEIVED**

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- ☐ Yes ☒ No If your answer is "Yes," why is another registration being sought? (Check appropriate box.) ☐

- e. ☐ This is the first published edition of a work previously registered in unpublished form.

- I, ☐ This is the first application submitted by this author as copyright claimant.**

- c. ☐ This is a changed version of the work, as shown by space 6 on this application.

**If your answer is "Yes," give Previous Registration Number:**

Year of Registration:

**DERIVATIVE WORK OR COMPILATION**

**For writing 34-total Identify any preceding work or works that this work is based on or incorporates. ▼**

**Previously published versions of Aquatec, third party drivers, graphics packages, libraries and optional features.**

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**Revisions and additional text of computer program.**

**DEPOSIT ACCOUNT** If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.  
Name  Account Number

**CORRESPONDENCE** Give name and address to which correspondence about this application should be sent. Name/Address Apt/City/State/ZIP ▼

**Carol Anne Boen, Sonnenschein Nath & Rosenthal LLP  
7800 Sears Tower, 233 South Wacker Drive  
Chicago, Illinois 60606**

Open early and daytime telephone number is: (312) 876-3122

For number - (312) 876- 934

**Send to:** [cboen@sompoen.com](mailto:cboen@sompoen.com)

**CERTIFICATION\*** I, the undersigned, hereby certify that I am the

**Check only one:**

- ☐ author  
☐ other copyright claimant  
☐ owner of exclusive rights

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Agent of Actuate Corporation  
 Name of author or other copyright claimant: © 2000 by Actuate Corporation

Typed or printed name and date ▽ If this application gives a date of publication in space 3, do not sign and submit it before that date

**Carol Anne Bean**

Date: 6/25/06

Standardized signature (X) ▼

X Caroline Sec

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envelope  
to this  
address:**

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**Carol Anne Bezo, Sonnenschein Nath & Rosenthal LLP**

**Shirley M. Stinebaugh** ▾

**7800 Sears Tower, 233 South Wacker Drive**

**Chicago, Illinois 60606**

**\*17 U.S.C. § 504:** Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by us with the intention, shall be fined not more than \$2,500.

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**EXHIBIT D**

Registration Number:

TX 6-862-866

Effective date of  
registration:

August 4, 2008

Title

Title of Work: Actuate 9.0

Completion/ Publication

Year of Completion: 2006

Date of 1st Publication: September 28, 2006

Nation of 1st Publication: United States

Author

Author: Actuate Corporation

Author Created: computer program

Work made for hire: Yes

Citizen of: United States

Domicile in: United States

Copyright claimant

Copyright Claimant: Actuate Corporation

2207 Bridgepointe Parkway, Suite 500, San Mateo, CA 94404, United States

Limitation of copyright claim

Material excluded from this claim: computer program

Previous registration and year: TX0006348877 2004

TX0006348882 2005

New material included in claim: computer program, Revisions and additions

Rights and Permissions

Organization Name: Actuate Corporation

Name: To whom it may concern

Address: 2207 Bridgepointe Parkway

Suite 500

San Mateo, CA 94404 United States

Certification

---

Name: Sharon R. Smith

Date: August 4, 2008

---

**IPN#:**

**Registration #:** TX0006862866

**Service Request #:** 1-79797261

Morgan, Lewis & Bockius LLP  
Sharon R. Smith  
1 Market Street, Spear St Tower  
San Francisco, CA 94105 United States

---

**EXHIBIT E**



Registration Number:

TX 6-862-880

Effective date of  
registration:

August 4, 2008

Title

Title of Work: Actuate 9 SP1

Completion/ Publication

Year of Completion: 2006

Date of 1st Publication: December 22, 2006

Nation of 1st Publication: United States

Author

Author: Actuate Corporation

Author Created: computer program

Work made for hire: Yes

Citizen of: United States

Domicile in: United States

Copyright claimant

Copyright Claimant: Actuate Corporation

2207 Bridgepointe Parkway, Suite 500, San Mateo, CA, 94404, United  
States

Limitation of copyright claim

Material excluded from this claim: computer program

Previous registration and year: Pending 2006

TX0006348882 2005

New material included in claim: computer program, revisions and additions

Rights and Permissions

Organization Name: Actuate Corporation

Name: To whom it may concern

Address: 2207 Bridgepointe Parkway

Suite 500

San Mateo, CA 94404 United States

**Certification**

---

**Name:** Sharon R. Smith

**Date:** August 4, 2008

---

**IPN#:**

**Registration #:** TX0006862880

**Service Request #:** 1-82253081

Morgan, Lewis & Bockius LLP  
Sharon R. Smith  
1 Market St., Spear St. Tower  
San Francisco, CA 94105 United States

---

**EXHIBIT F**

Registration Number:

TX 6-862-885

Effective date of  
registration:

August 4, 2008

Title

Title of Work: Actuate 9 SP2

Completion/ Publication

Year of Completion: 2007

Date of 1st Publication: July 18, 2007

Nation of 1st Publication: United States

Author

Author: Actuate Corporation

Author Created: computer program

Work made for hire: Yes

Citizen of: United States

Domiciled in: United States

Copyright claimant

Copyright Claimant: Actuate Corporation

2207 Bridgepointe Parkway, Suite 500, San Mateo, CA, 94404, United States

Limitation of copyright claim

Material excluded from this claim: computer program

Previous registration and year: Pending 2006

Pending 2006

New material included in claim: computer program, revisions and additions

Rights and Permissions

Organization Name: Actuate Corporation

Name: To whom it may concern

Address: 2207 Bridgepointe Parkway

Suite 500

San Mateo, CA 94404 United States

Certification

---

**Name:** Sharon R. Smith

**Date:** August 4, 2008

---

**IPN#:**

**Registration #:** TX0006862885

**Service Request #:** 1-82253195

Morgan, Lewis & Bockius LLP  
Sharon R. Smith  
1 Market Street, Spear St Tower  
San Francisco, CA 94105 United States



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**EXHIBIT G**

Registration Number:

TX 6-863-869

Effective date of  
registration:

August 4, 2008

Title \_\_\_\_\_

Title of Work: Actuate 9 SP3

Completion/ Publication \_\_\_\_\_

Year of Completion: 2007

Date of 1st Publication: December 21, 2007

Nation of 1st Publication: United States

Author \_\_\_\_\_

Author: Actuate Corporation

Author Created: computer program

Work made for hire: Yes

Citizen of: United States

Domiciled in: United States

Copyright claimant \_\_\_\_\_

Copyright Claimant: Actuate Corporation

2207 Bridgepointe Parkway, San Mateo, CA, 94404, United States

Limitation of copyright claim \_\_\_\_\_

Material excluded from this claim: computer program

Previous registration and year: Pending 2007

Pending 2006

New material included in claim: computer program, revisions and additions

Rights and Permissions \_\_\_\_\_

Organization Name: Actuate Corporation

Name: To whom it may concern

Address: 2207 Bridgepointe Parkway

Suite 500

San Mateo, CA 94404 United States

**Certification**

---

**Name:** Sharon R. Smith

**Date:** August 4, 2008

---

**Correspondence:** Yes